

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Petition of BellSouth Telecommunications Inc.)	WC Docket No. 03-220
For Forbearance Under 47 U.S.C. 160(c))	
From application of Sections 251(c)(3),)	
(4), and (6) In New-Build, Multi-Premises)	
Developments)	

**REPLY COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.**

Qwest Communications International Inc. (“Qwest”) respectfully submits its reply comments in the above-captioned proceeding, in response to the comments filed regarding the BellSouth Telecommunications, Inc. (“BellSouth”) Petition,¹ pursuant to Section 10 of the Communications Act of 1934, as amended (“Communications Act”).²

I. Qwest Agrees With SBC And Verizon That A Carrier’s Regulatory Status Outside An MPD Should Not Determine Its Regulatory Status Inside The Development

In its initial comments, Qwest supported BellSouth’s proposition that a carrier’s regulatory status outside the property boundaries of a newly-developed Multi-Premise Development (“MPD”) is irrelevant to judging the competitive situation inside the MPD, and should not be dispositive of whether the carrier is classified as an incumbent local exchange carrier (“ILEC”) or a competitive local exchange carrier (“CLEC”) inside the development. As Qwest demonstrated from its own experience, pre-existing ILEC and CLEC labels are inapposite in a newly-developed MPD. Qwest also verified that the bidding process for contracts to serve

¹ BellSouth’s Petition for Forbearance Under 47 U.S.C. 160(c) in New-Build, Multi-Premise Developments, filed Oct. 8, 2003. *And see Public Notice*, DA 03-3146, rel. Oct. 9, 2003.

² *See* 47 U.S.C. § 160 *et seq.*

newly-constructed MPDs is both intense and extremely competitive, and no carrier -- whether ILEC or CLEC -- has any inherent competitive advantage.³ Moreover, a carrier that wins the contract to provide service in such a new development literally does not fit within Section 251(h)(1)'s definition of an "incumbent" within the "area" represented by the MPD.⁴ Qwest therefore argued that the question of whether MPDs are subject to competition should instead be determined on the facts.⁵ For these reasons, Qwest agrees with SBC Communications Inc. ("SBC") and the Verizon telephone companies ("Verizon") that all LECs compete on an equal footing to provide services to newly-constructed MPDs, and that ILECs should therefore not be regulated more heavily than their competitors.⁶

II. Qwest Disagrees With CLEC Claims That ILECs Enjoy A Competitive Advantage Due To Facilities Outside The MPDs

Qwest strongly disagrees with the assertions made by AT&T Corp. ("AT&T"), Covad Communications ("Covad"), Allegiance Telecom ("Allegiance") and other CLECs that freeing ILECs from their Section 251(c) obligations inside newly-constructed MPDs would "enable [them] to leverage their ubiquitous local network to the competitive disadvantage of CLECs," as AT&T claims.⁷ As Qwest stated in its initial comments, conditions in the market outside the MPDs do not actually give ILECs a competitive advantage over CLECs, since there are no existing facilities or existing customers in a newly-developed MPD. As a result, any "first mover" advantages that an ILEC might have outside an MPD should not be imputed to its

³ See Qwest Comments at 3.

⁴ See 47 U.S.C. § 252(h)(1).

⁵ See Qwest Comments at 5-8.

⁶ See SBC Comments at 1, 2-5; Verizon Comments at 2; *see also* Comments of Qwest, MB Docket No. 03-172, filed Sep. 11, 2003 at 2, 5-8.

⁷ AT&T Comments at 19.

interior. Qwest believes that the CLECs' arguments favoring such a linkage fall apart under close examination, and hopes that the Federal Communications Commission ("Commission") will treat these claims with skepticism.

For example, AT&T claims that ILECs enjoy an insurmountable competitive advantage because they are "required only to make incremental extensions" of their networks to serve newly-constructed MPDs, or that an ILEC's "previous deployment of dark fiber" similarly allows the ILEC to "deploy such excess capacity" at lower costs, and therefore enjoy an advantage over competitors for MPD contracts.⁸ Similarly, Allegiance, Covad and other CLECs argue that the market inside newly-constructed MPDs is really just an extension of the market outside,⁹ and cite portions of the impairment analysis from the Commission's recent *Triennial Review Order* as their basis.¹⁰

There are multiple reasons why these assertions are wrong. First, Qwest believes that the CLECs are taking the *Triennial Review Order* out of context. Qwest is aware that the Commission recently ruled in the *Triennial Review Order* that ILECs enjoy certain "first-mover" efficiencies when deploying high-capacity loops such as fiber-optic cable, such as having an existing customer base and being able to draw on fixed costs that they have already incurred, for activities such as obtaining rights-of-way, digging up the streets, trenching the fiber-optic cable,

⁸ See *id.* at 4, 19-21.

⁹ See, e.g., Allegiance Comments at 15-17 and Covad Comments at 7-8.

¹⁰ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147, FCC 03-36 (rel. Aug. 21, 2003) ("*Triennial Review Order*"), appeals pending *sub nom. United States Telecom Association v. FCC*, Nos. 00-1012, *et al.*, *cons. with* Nos. 03-1310, *et al.*, on Oct. 29, 2003 (D.C. Cir.).

and laying fiber-optic cable.¹¹ However, newly-developed MPDs are distinct. Contrary to AT&T's claim, ILECs simply have no "ubiquitous local network" inside such a development. This network, after all, is what the ILECs and the CLECs are competing with each other to build. Even more to the point, and as Qwest stressed in its initial comments, there is no incumbent carrier in a newly-developed MPD that is built in a greenfield or an intensely redeveloped site, and there is no existing customer base, and there are no existing facilities.¹² From Qwest's extensive experience, any ILEC or CLEC that builds a new telecommunications system in a greenfield situation will incur similar costs regardless of whether or not they possess their own facilities outside the MPD's boundaries. As a consequence, no carrier has any inherent competitive advantage when bidding to serve new MPDs or installing facilities in newly-built MPD projects.

There is a second problem with the CLECs' argument. Any "incremental" advantage that an ILEC might enjoy when constructing new plant inside an MPD or any "leverage" that an ILEC might have by virtue of having facilities outside the MPD is negated by the fact that where a CLEC has an appropriate interconnection agreement, CLECs have the ability to purchase elements of the ILEC's existing network up to the demarcation point of the development, and may do so at TELRIC prices.¹³ This, after all, is precisely what the *Triennial Review Order* required as part of its impairment finding concerning high capacity local loops, in the very sections that the CLECs are citing to support their case.¹⁴ As a result, the market outside the

¹¹ See, e.g., *id.* ¶ 14.

¹² See Qwest Comments at 5-8.

¹³ See *Triennial Review Order* ¶¶ 303-306.

¹⁴ See *id.* ¶¶ 307, *et seq.*

MPDs does not and should not justify regulating the ILECs differently from CLECs inside the MPDs.

AT&T makes the argument that forbearance is not warranted “[e]ven in true ‘greenfield’ situations” since “the playing field is not level even when the companies are competing to serve a massive new development that will require construction of *every* component of telecommunications infrastructure from scratch.”¹⁵ AT&T claims that ILECs have lower capital costs, a “captive customer base,” and superior brand recognition, and that developers and landowners frequently show favoritism to the ILECs, even when CLECs provide “comparable service” at a comparable price.¹⁶ Qwest finds it ironic that AT&T, which owns one of the best established brands in the world, is complaining about the brand recognition strength of its competitors as a type of undue market advantage. The problems about which AT&T is complaining are fundamental to competitive markets. What is more, newcomers usually do not establish a place for themselves in a competitive market by providing a “comparable service” at a comparable price to their rivals: instead, they compete with their rivals by providing a better or technologically superior product at a comparable price, or they offer the public a lesser service at a lower price that meets a particular market segment’s needs. Such poor-mouthing by AT&T is a singularly unconvincing and weak reason for continuing to regulate ILECs under Section 251(c) in newly-developed MPDs.

Finally, AT&T also complains that many developers “charge highly inflated monthly fees” for CLECs to access their properties and impose “special security restrictions” on CLEC employees.¹⁷ However, AT&T’s complaints are characteristic of the way landlords, developers

¹⁵ See AT&T Comments at 23-24 (emphasis in original).

¹⁶ *Id.*

¹⁷ *Id.* at 24.

and property owners behave in general, and these difficulties affect both ILECs and CLECs alike. Qwest has experienced similar access problems within the 14-state region where it is an incumbent carrier, particularly when dealing with MPDs that are served by CLECs. What is more to the point, the actions of third parties are not an adequate justification for regulating the ILECs more heavily than their competitors under Section 251(c). Qwest strongly suggests that if CLECs and ILECs are being locked out of MPDs despite the Commission's access rules, that issue should be dealt with in a separate proceeding.

The lingering impression left by these AT&T comments -- as well as the comments filed by several other CLECs -- is that they are mixing the economic rationale for requiring access and unbundling under Section 251(c) with a separate, result-oriented policy argument. That argument is that the Commission should continue to regulate the ILECs more heavily due to their general market position, and that maintaining the current regulatory regime will assist the CLECs in being more competitive. If that is what the CLECs are in fact suggesting, it is not acceptable. Not only would such results-oriented regulation be unfair, and not only would it fail the rationale of Section 251(c), but it would also be arbitrary and capricious.

III. Conclusion

As Qwest stated in its initial comments, as well as in other recent proceedings before the Commission, it is essential that the Commission regulate similarly-situated carriers in the same manner, regardless of whether they are classified as ILECs or CLECs.¹⁸ For this reason, Qwest believes the current regulatory asymmetry between ILECs and CLECs that serve newly-constructed MPDs is not justifiable. Despite the CLECs' implications to the contrary, there is in fact robust competition between ILECs and CLECs to serve newly-constructed MPDs

¹⁸ Qwest Comments at 4-7.

throughout the country. And despite the CLECs' obfuscations, newly-constructed MPDs are distinct from the market outside their boundaries, since they literally have no incumbent carriers. As a result, Qwest reiterates that it does not make sense to regulate ILECs differently from CLECs for purposes of Section 251(c) (3), (4) and (6) in newly-developed MPDs, simply based on whether the carrier has historically been classified as an ILEC or CLEC outside the development.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) served via e-mail on Ms. Janice Myles of the Wireline Competition Bureau's Competition Policy Division, 3) served via e-mail on the FCC's duplicating contractor Qualex International, Inc. and, 4) served via First Class United States mail, postage prepaid on the parties listed on the attached service list.

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